UNITED STATES DISTRICT COURT
for the
South Carolina District of Charleston Division

§§

Jackie Richardson 211240)
Plaintiff)
v.) Case No. 06-CP-10-3386
Warden Reynolds; and)
)

Defendant
Jon Ozmint, Director, S.C. Dept. of Corrections

Petitioner Presents Memorandum of Facts and Laws Pertaining To Issues Presented.
Petitioner Motions For An Evidentiary Hearing.

§§

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Question Presented

Did Court of Appeals erred in dismissing Writ of Certiorari without conducting an evidentiary hearing to show cause that PCR judge did not make specific findings of fact, and state expressly its conclusion of law relating to each issue presented?

Did Court of Appeals erred when denying Petitioner his Constitutional Right to appellate review?

Statement of Case

In October 1992, the Charleston County Grand Jury indicted Jackie Richardson for two counts of murder and one count of armed robbery. On February 10, 1994, Richardson pled guilty as charged and was sentenced to two twenty years life sentences for two counts of murder running concurrent, and twenty-five years for armed robbery running consecutive. There was no appeal of the conviction.

On December 22, 1999, filed a PCR application, which was dismissed as being untimely. Richardson then appealed the PCR court's decision in South Carolina Supreme Court, which denied certiorari December 4, 2002. On November 26, 2003, Richardson filed for state Habeas Corpus to challenge the ruling of the lower courts, thus too, being denied.

On August 29, 2006, Petitioner Richardson, filed a second PCR application on the issue of not being informed of the right to appeal. However, the Respondents stated that such PCR application would be successive and out-of-time as being barred by the statue of limitation, and the doctrine of laches. Judge Few, reviewed the PCR application on September 12, 2007. Then granted the State's dismissal, on November 12, 2007. Richardson then filed an appeal upon Judge Few's decision in a pro-se explanation brief as mandated by Rule 227(c),SCACR. Pleasingly to the Court, the Petitioner had established meritable claims within the explanation brief pro-se, thus being granted the right to move forward upon obtaining writ of certiorari. Such hope led Petitioner Richardson, to file on October 27, 2008, for Writ of Certiorari.

In a letter of correspondence from the South Carolina Court of Appeals dated January 29, 2010, informing Petitioner Richardson that on January 6, 2009, the Supreme Court ordered his case to be transferred to the Court of Appeals for consideration.

On February 10, 2010, Court of Appeals ordered denial of Petition for Writ of Certiorari. Immediately, Petitioner Richardson filed on February 23, 2010 a Rule 59(e) Motion To Reconsider The Denial of Petition for Writ of Certiorari and Granting Petition Rules 226,227,SCACR. In Mr. Richardson's 59(e) Motion For Reconsideration, he points out two procedural defaults conducted in appellate review. (1) Appointed Appellate Defender failed to establish her role as appointed counsel, required by statutes §17-3-10; §17-4-10. (2) Court of Appeals failed to address the fact that PCR judge did not make a specific finding of fact and state expressly its conclusion of law, relating to each issue presented. As statute §17-27-20 makes known that PCR judge's findings should not be upheld if there is no probative evidence to support them.

However, after reviewing Petitioner's 59(e) Motion for Reconsideration, the Court of Appeals remained sound in their ruling of denying Petition for Writ of Certiorari. On May 4, 2010 this decision was remitted to the lower court. Thus, now being the reason Petitioner now files for Habeas Corpus to have this Court review such cause of action.

Presentation of Facts and Laws of Issues

(1) Petitioner was not informed of right to appeal.

Facts

(A) On February 10, 1994 Petitioner Richardson was sentenced and convicted on a guilty plea to two twenty years life sentences for two counts of murders running concurrent, and twenty-five years for armed robbery, running consecutive. Trial counsel did not make Petitioner aware of any procedures to appeal conviction. Trial counsel did not speak to Petitioner after conviction. Trial counsel made no intentions of proceeding any further. It was Petitioner who requested to obtain his transcript in a letter of correspondence dated August 11, 1995. Within same letter, Petitioner questioned trial counsel if there was any way of going back to court. Trial counsel responded in a letter of correspondence, that there was nothing of merits to file an appeal. Later in another letter of correspondence, trial counsel advised it would not be a good idea to appeal whereas Petitioner could receive a thirty years life sentence or death penalty if co-defendant was brought up by State to testify. Trial counsel had finally advised Petitioner that it would be better for him to pursue an education or work as to make the best of his time.

Petitioner did not file a PCR at that time because he believed he was being given sound advice from trial counsel. It was not until someone advised him that his case held merits to file a PCR. Petitioner filed a PCR application on December 22, 1999, that was dismissed as untimely. Petitioner Richardson then appealed the PCR court's decision with the Supreme Court of South Carolina, which denied writ of certiorari. On November 26, 2003, Petitioner filed for State Habeas Corpus to challenge the ruling, however he was unsuccessful and was denied.

ON August 29, 2006, Petitioner Richardson filed a second PCR application informing the court that he was not informed the right to appeal. Petitioner has not had an evidentiary hearing on this issue of not being informed the right to appeal.

(B)

(1) Petitioner states that trial counsel must inform him of his right to appeal and how to perfect one. Under, U.S. v. Gipson, 985 F.2d 212,(5th Cir.1993), the ABA standards for criminal justice provide, Standard 4-8.2 Appeal (A): After consequences of the court's judgment and defendant's right of appeal ... (B) the lawyer should take whatever steps are necessary to protect the defendant's right of appeal. ABA Standards Relating to the Administration of Criminal Justice, § 4-8.2 (2d.ed.1979). Also citing, Roe v. Flores-Ortega, 120 S.Ct. 1029, (2000). Thus, ABA Standards for Criminal Justice 21-2.2(b) (2d.ed.1980): "Defense counsel should advise a defendant on the meaning of the court's judgment, with defendant's right to appeal, on the possible grounds for appeal, and of the probable outcome of appealing. Counsel should also advise of any post-trial proceedings what might be pursued before or concurrently with an appeal. While counsel should do what is needed to inform and advise defendant, the decision whether to appeal, like the decision whether to plead guilty, must be the defendant's own choice."

(2) Petitioner states that trial counsel's representation continues after trial to make known of right to appellate review. Whereas, trial counsel is more familiar with the proceedings in case. Nelson v. Peyton, 415 F.2d. 1154 (1969).

(3) Trial counsel never filed Johnson or Anders brief indicating direct appeal would be frivolous. Petitioner states even if he pled guilty, trial counsel still has a duty to advise defendant of right to appeal, if the proceeding consist of error. Marrow v. U.S., 772 F.2d. 525 (9th Cir.1985).

(4) Counsel erroneously advised defendant that if he appealed, that he would be subjecting himself to the death penalty, if he was successful on appeal, based on this advise defendant did not appeal. Bell v. Lockhart, 795 F.2d 655 (8thCir.1986).

(5) Petitioner insists that he has shown colorable claims of being prejudiced by losing the right to a meaningful appeal, provided by the 1,6,14 Amendments of the Constitution.

(2) Petitioner was denied counsel.

Facts

(A) Petitioner reiterates that he was sentenced and convicted February 10, 1994, in a plea of guilty. Petitioner insists that trial counsel did not communicated with him after guilty plea hearing, sentencing and conviction. Thus, being the reason Petitioner was never made aware of his right to appellate review. Or made aware that he was being relieved of his representation by filing a Johnson brief. It was the Petitioner who wrote a letter of correspondence to trial counsel, on August 11, 1995, asking to obtain his transcript, and wanting to know if there was any way of going back to court. Trial counsel responded in a letter of correspondence, that there was nothing of merits in which to file an appeal.

Moreover, during a course of correspondence by letters, trial counsel continued to advised Petitioner of reasons he should not appeal, such as suggesting that if Petitioner appeals the State could inform co-defendant and ask him to testify against Petitioner for a lighter sentence. Secondly, trial counsel stated that should appeal be granted the State could push for a thirty years life sentence or the death penalty. Trial counsel finally advised Petitioner to make the best of his time by getting an education and working. Moreover, trial counsel not only left his client, but one that suffered from a mental disorder and slow learning disability. Trial counsel knew of the Petitioner's mental situations, yet, disregarded his responsibility and duty of assisting him within appellate review. Or how to pursue an appeal pro-se.

Laws

(B)

(1) Every criminal defendant has unqualified right, whether or not indigent, to be represented by counsel at all critical stages of any prosecution against him, and right begins when the accusatorial process begins as to him. Nelson v. Peyton, 415 F.2d 1154 (1969).

(2) Petitioner states, "The standard review to determine whether a defendant was constructively denied his right to counsel is a mixed question of law and fact, reviewed de novo," Childress v. Johnson, 103 F.3d 1221 (5thCir.1997); Barrientos v. U.S., 668 F.2d 838 (1982).

(3) Petitioner makes known that, an attorney's performance is judged on the basis of the facts known to him, and the rule of law and procedure, he is held to know, as an attorney representing defendants in criminal proceedings. Vela v. Estelle, 708 F.2d 954 (5th Cir.1983); S.C.Code of Laws §17-3-10.

(4) Under, Galloway v. Stephenson, 510 F.Supp. 840 (1981), [W]hen a court discovers that an attorney has been derelict in the performance of a court duty which could forfeit a legal right accorded to a defendant in a criminal case is [sic] significant as the right to an appeal on the merits, disciplining measures against the attorney-rather than deprivation of the defendant's right-may be the only constitutional remedy. At least that is true in this case. [Citing] Flanagan v. Henderson, 496 F.2d 1274,1278 (5th Cir.1974).

(5) Petitioner now states, that denial of counsel at a critical stage has no cure for the injury that has been caused, except relief because prejudiced has been presumed. Woodard v. Collins, 898 F.2d 1027 (5th Cir.1990); U.S. v. Cronic, 466 U.S. 648,653-58, 104 S.Ct. 2030,2045-46, 80 L.Ed.2d. 657 (1984); U.S. v. Morrison, 101 S.Ct. 665 (1981).

(6) Petitioner argues that trial counsel prejudiced him by denying him counsel when counsel knew his client suffered from a metal condition that would hinder him to appeal his case on appeal. Wood v. Zahradnick, 578 F.2d 980,982 (4th Cir.1978); Smith v. McCormick-Ake v. Oklahoma, 105 S.Ct. 1087 (1985).

(7) Petitioner has marshalled all facts and questions of law to shed light on his claim of being denied counsel, as in . resulting to a violation of his 6th Amendment right.

(3) Petitioner states incomplete transcript.

Facts

(A) Petitioner states for the record that he pled guilty on February 10, 1994, to a twenty years life sentence for two counts of murder, and twenty-five years for armed robbery. Petitioner brings to this Court's attention that his trial counsel denied him representation on appellate review and on procedures to file an appeal pro-se. Moreover, on August 11, 1995, it was Petitioner who requested for guilty plea transcript, questioning if there was any way of going back to court. Trial counsel responded by letter advising Petitioner of his request, along with only the technical records and not the guilty plea hearing transcript. The Petitioner filed his original PCR on December 22, 1999, and the Respondents in that case stated that the Petitioner's transcript was destroyed after four (4) years. See, Return and Memorandum of Law In Support of Motion For Summary Judgment, pgs. 3 and 7. This is far from the truth, whereas, on February 25, 2002, the Petitioner received a letter from Mr. T. Ferguson, Appellate Services Coordinator, asking for a copy of Petitioner's transcript. See, (App. pg. 98). The Petitioner replied with the response of not having a complete transcript. See, (App. pg. 99). Afterwards, the Petitioner received his copies of indictments in the following months after Mr. T. Ferguson made his copy. Whereas, the Petitioner only had a copy of the technical records. So, there must have been a record of the Petitioner's sentencing/guilty plea hearing in existence somewhere. As this would only be the reason such indictments were found, stamped "Guilty Plea", as in reference to the guilty plea hearing. See, (App. pg. 30, 32, & 36). Moreover, Petitioner had amended the issue of his transcript within Writ of Certiorari filed October 27, 2008 before the Supreme Court of South Carolina. Whom within order dated January 6,2009, to Petitioner's case transferred to the Court of Appeals. The Court of Appeals reviewed Petitioner's Writ of Certiorari twice, once during its initial review, and secondly on a 59(e) Motion for Reconsideration, and in both reviews there were no evidentiary hearing to look deeper into the records to marshal the facts.

Laws

(B)

(1) Petitioner states the Constitution makes known a State must provide trial transcript or acceptable substitute, to an indigent's claim, under the 14th Amendment. Ennis v. LeFevre, 560 F.2d 1072 (1977); U.S. v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, (1976); Fullan v. Comm. of Corr. St. of N.Y., 891 F.2d 1007 (1989).

(2) Petitioner states S.C. Statutes §14-13-10; §14-13-20; §14-15-30 mandates that court reporter shall keep a permanent copy of transcript as a record should the court need it for future reviewing. Thus, making such record substantial evidence. Rules 401, 402 SCFRE makes known the relevancy of evidence. Chavis v. Rowe, 643 F.2d 1281, (1981), evidence is material "if [it] creates a reasonable doubt that did not otherwise exist."

(3) Petitioner states there has been a, "discriminatory interference by the State through one of its officials, agents or officers with a statutory right of appeal." Cochran v. Kansas, 316 U.S. 255, 62 S.Ct. 1068, 86 L.Ed 1453, (1942); Dowd v. U.S. ex rel. Cook, 340 U.S. 206, 71 S.Ct. 262, 95 L.Ed 215, (1951); See, Coffman v. Bomar, 220 F.Supp. 343 (1963).

(4) Petitioner states, Rule 11, provides for placing of plea agreements on record, for full inquiry into voluntariness of plea, for detailed advice to defendant concerning this rights and consequences of this plea and determination that defendant understands these matters, and for determining the accuracy of plea. U.S. v. Reed, 825 F.Supp. 323, (D.DC 1993).

(5) Petitioner states that his claim has merit as he cites, U.S. v. Cashwell, 950 F.2d 694 (11th Cir. 1992), Contends that due to the absence of a transcript of his voir dire proceedings and the inability of the court to adequately reconstruct those proceedings, he has been denied a meaningful direct appeal, and thus deprived of his right to due process. In particular, Cashwell contends that the court reporter's failure to transcribe the voir dire proceedings in accordance with Court Reporter Act, 28 U.S.C. §753, constitutes a substantial and significant omission which precludes him from being able to demonstrate possible errors and mandates that his conviction be vacated.

(4) PCR Court did not make specific findings of fact, and state expressly its conclusion of law relating to each issues presented.

Facts

(A) Petitioner filed a second PCR application August 29, 2006, on the issue of not being informed of his right to appeal. However, on September 12, 2007, such PCR application was dismissed by PCR court, Judge Few. At such, PCR hearing, Judge Few did not expressed or addressed the issue of the Petitioner not being informed of his right to appeal. On October 27, 2008 Petitioner filed a Writ of Certiorari with the South Carolina Supreme Court. And it was the South Carolina Supreme Court whom ordered Petitioner's case to be transferred to the Court of Appeals on January 6, 2009, for review. Petitioner was denied Writ of Certiorari twice, once during the Court of A Appeals initial review, and secondly on a 59(e) Motion for Reconsideration. In both denials, the Court of Appeals had not ordered an evidentiary hearing to review the records to marshal the facts.

Laws

(B)

(1) Petitioner argues that he has been denied his 14 Amendment right to due process of law and equal protection. Whereas, the South Carolina Supreme Court has held that the UPCA states the, "court shall make specific findings of facts, and state expressly its conclusions of law". S.C. Code Ann. §17-27-90. That court went further to state, "that the failure to address the issues in the order required that a new hearing be conducted ".

(2) Petitioner states that an evidentiary hearing is very important as it allows him to present evidence first and ha has the burden to prove, by preponderance of the evidence, that he is entitled to the relief sought in the application. Petitioner diligently sought with the court for an evidentiary hearing to review his claim. Miller v. Champion, 161 F.3d 1249 (1998); Becton v. Barnett, 920 F.2d 1190 (4th Cir. 1990).

Conclusion

Petitioner states that there has been a procedural brake down within the court system. Petitioner argues that the right to appeal is a valuable and substantial right, most definitely in case where a long term of imprisonment has been imposed. Whereas, the Petitioner is serving twenty years life, plus twenty-five years, thus making it a critical necessity of seeking appellate review. The procedural due process provides: (1) notice of the proceedings, (2) a hearing, (3) opportunity to present a defense, (4) an impartial tribunal, and (5) an atmosphere of fairness. Petitioner is convinced there has been a "gross miscarriage of justice". Whereas, S.C. Code Ann. §17-27-80, (1976), requires the PCR court to "make specific findings of facts, and state expressly its conclusion of law relating to each issue presented ", Within the South Carolina Law Review, Vol.45, Winter 1994, No.2, by John H. Blume, pages 255,256, under subtitle Posthearing Procedure (b) Orders; the South Carolina Supreme Court specifically expresses the PCR court's failure of addressing the merits issued by applicant. Also, "determined that the failure to address the issues in the order required that a new hearing be conducted ".

Petitioner argues that an "extrinsic fraud ", is that which induces a person not to present a case or claim or deprives a person of the opportunity to be heard. S.C. Code Ann. §17-27-90, (1985) makes known that issues not ruled on by PCR judge will not be considered preserved for reviews by the Supreme Court. Thus, being Petitioner's reason to express the importance to show a proper standard of review of a PCR evidentiary hearing whether "any evidence of probative value " exists to sustain the PCR judge's findings. Petitioner points out he has been denied the right to appeal his direct appeal, his conviction and that the PCR court overlooked the ordering of an evidentiary hearing to find some truth to the claim.

Petitioner further states that he had amended the issues of being denied counsel, and not having a complete transcript on Writ of Certiorari, however, Court of Appeals also made judgment of denial without searching the records per evidentiary hearing. These rulings could not be based on fact finding measures. Had they were, then each factual dispute would have been resolved by evidentiaty hearing in the State hearings. Miller v. Chapman, 161 F.3d 1249, (19th Cir. 1998).

In conclusion, Petitioner states that he has been denied the right to appeal, which is substantial right. He includes that he has been denied counsel during all critical stages of proceedings, by the neglect of trial counsel during appellate proceedings. Finally, Petitioner makes known the incomplete transcript that provide to him, which only contained the technical records and not guilty plea hearing. Petitioner has shown burden of proof of that why he claims to have been denied his Constitutional rights. 1st,6th,14th Amendments. Petitioner states the remedy, " should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests ". U.S. v. Morrison, _U.S._ _,101 S.Ct. 665, 668, 66 L.Ed.2d 564 (1981).

§§

Affidavit

I, Jackie Richardson swear upon oath that the foregoing is true and correct to the best of my knowledge.

Jackie Richardson

JACKIE RICHARDSON 211240

Sworn to and Subscribed before me

this __ day of ________, 2010.

____

Notary Public for South Carolina

My Commission Expires:

AG
SOL
AT
GS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	
		2006-CP-10-3386
Jackie Richardson, 211240	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter comes before the Court by way of an application for post-conviction relief filed August 26, 2006. The Respondent made return to the application on or about October 5, 2006. A hearing on the Respondent's motion to dismiss was convened at the Charleston County Courthouse on September 12, 2007. The Applicant was present at the hearing and was represented by Jeffery Lee Sabel, Esquire. The Respondent was represented by Salley W. Elliott of the South Carolina Attorney General's Office.

This Court had before it the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the State's return and attachments thereto, the Applicant's pro se return to the State's motion to dismiss, the Supreme Court Order denying certiorari from the first PCR appeal, the appendix from the first PCR appeal including the first application and return, the Conditional Order of Dismissal, the transcript from the first PCR hearing, the Order denying the application, the responses to the conditional Order of Dismissal, and the federal habeas corpus documents.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the October 1992 term of the Charleston County Grand Jury for two counts of murder (1992-GS-10-6004, 6005) and one count of armed robbery (1992-GS-10-6006). He was represented by D. Ashley Pennington, Esquire. On February 10, 1994, the Applicant pled guilty as charged. He was sentenced by the Honorable A. Victor Rawl to confinement for concurrent terms of life for each count of murder and a consecutive term of twenty-five (25) years for armed robbery. The Applicant did not appeal his conviction or sentence.

The Applicant subsequently filed an application for PCR on December 22, 1999 in which he alleged the following grounds for relief:

1. Ineffective assistance of counsel in that counsel
   a. Failed develop a defense and/or theory of Applicant's case
   b. Failed to conduct independent investigation
   c. Failed to inquire into lack of or absence of forensics report
   d. Advised Applicant to plead guilty

2. Involuntary guilty plea in that Applicant was led to believe he had no defense in the case and was not thoroughly informed of the nature of the accusations or the prerequisites set forth in the claims of ineffective assistance of counsel.

3. Violation of due process/equal protection in that counsel was ineffective and Applicant was denied his right to a fair trial.

4. Failure to inform by indictment in that the government failed to personally inform Applicant of the nature and cause of the accusation against him by way of an indictment.

The Applicant's affidavit was attached to the application. In support of the application and as explanation for later filing, the Applicant asserted he has only a ninth grade education, has been

studying the law for more than five years, and did not understand the application of the law to the facts of his case. The State filed its Return and Motion to Dismiss on March 10, 1999. On March 23, 2000, the Honorable Daniel E. Martin, Sr., issued a Conditional Order of Dismissal. The Applicant filed a response to the Conditional Order of Dismissal asserting he did not understand the law as applied to the facts and has recently discovered new evidence. On September 25, 2001, an evidentiary hearing was held before the Honorable R. Markley Dennis, Jr., at which the Applicant was present and was represented by Linda C. Garrett, Esquire. W. Edgar Salter, III, of the South Carolina Office of the Attorney General, represented the Respondent. Prior to the hearing, the Applicant submitted an additional document in further response to the Conditional Order of Dismissal asserting he was eighteen years of age at the time of the crime. He also attached a psychological evaluation. By Order dated September 25, 2001, Judge Dennis granted the State's motion to dismiss on the ground the application was filed beyond the applicable statute of limitations.

Wanda H. Haile of the South Carolina Office of Appellate Defense filed a timely notice of appeal on the Applicant's behalf and submitted a Johnson Petition for Writ of Certiorari; however, on December 4, 2002, the South Carolina Supreme Court denied the Petition. The issue raised in the petition was whether the application was properly dismissed as being untimely filed.

The Applicant thereafter filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina. The State filed a return and motion for summary judgment on May 7, 2004. Summary judgment in favor of the State of South Carolina was entered on October 26, 2004, dismissing the petition with prejudice.

In the current post-conviction relief application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that counsel
   a. Failed develop a defense and/or theory of Applicant's case
   b. Failed to conduct independent investigation
   c. Failed to inquire into lack of or absence of forensics report
   d. Failed to introduce Applicant's record of psychological disorders
   e. Failed to state the defense that Applicant had no intent for murder to be committed
   f. Failed to advise Applicant of his right to a direct appeal
   g. Failed to call an expert witness
   h. Failed to suppress and preserve issues on appeal

2. Involuntary guilty plea in that Applicant was led to believe he had no defense in the case and was not thoroughly informed of the nature of the accusations or the prerequisites set forth in the claims of ineffective assistance of counsel.

3. Violation of due process/equal protection in that counsel was ineffective and Applicant was denied his right to a fair trial.

4. Failure to inform by indictment in that the government failed to personally inform Applicant of the nature and cause of the accusation against him by way of an indictment and Applicant never saw the indictment until the day of the guilty plea hearing.

5. Denied a right to a direct appeal.

In support of his application and as an explanation for his late filing, the Applicant asserted that he has learning disability and mental disorder causing him difficulty in framing the law to the facts of his case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments at the post-conviction relief hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the

relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

This Court finds that this application for post-conviction relief must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10, *et. seq*. S.C. Code Ann. § 17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The PCR statute of limitations applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant entered a guilty plea and was sentenced for the offenses on February 10, 1994. This application was filed on August 26, 2006, which was well after the one-year statutory filing period had expired. This Court finds that Applicant has failed to present sufficient grounds that would exempt him from the application of the statute of limitations to this action. Therefore, it is dismissed as barred by the statute of limitations.

In addition, this Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to Applicant's prior application for post-conviction relief and prior federal habeas corpus petition. S.C. Code Ann. § 17-27-90 provides that:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and, thus, the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason as to why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, supra; Arnold v. State/Plath v. State, supra.

This Court further finds the Applicant had a full opportunity to litigate all allegations regarding ineffective assistance of counsel in both the state and federal courts. The Applicant continues to raise the same claims by repeated collateral attacks on his convictions. The other grounds present claims that could have been raised in those prior proceedings. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, the Court summarily dismisses all claims as barred by *res judicata*.

This Court also finds that the doctrine of laches bars the Applicant from raising these allegations in a post-conviction relief application. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981);

Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002). To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." McElrath, 276 S.C. at 283. The Applicant's delay is unreasonable and prejudiced the Respondent. A transcript of the guilty plea is no longer available. If the Applicant had sought post-conviction relief within a reasonable time after his plea, this problem would not exist. Therefore, this Court dismisses the application based upon the Applicant's lack of diligence in processing his claim for relief.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant failed to file his application within the time limits established in S.C. Code Ann. § 17-27-45(a), the filing is successive, and is barred by *res judicata* and the doctrine of laches. Therefore, this Court grants Respondent's Motion to Dismiss.

This Court advises the Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of this Order by counsel to secure the appropriate appellate review. An Applicant has a right to an appellate counsel's assistance in seeking review of denial of PCR. Rule 71.1(g), SCRCP, provides that if an Applicant wishes to seek appellate review, PCR counsel must file a notice of appeal on Applicant's behalf.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this _____ day of _____, 2007.

John C. Few
Presiding Judge
Ninth Judicial Circuit

11/12/07

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By _____
DEPUTY CLERK

Jan. 6, 2009

The Supreme Court of South Carolina

RE: TRANSFER OF CASES FROM SOUTH CAROLINA SUPREME COURT TO COURT OF APPEALS

ORDER

Pursuant to Rule 227(l), SCACR, the following post-conviction relief cases are hereby transferred to the Court of Appeals:

- Al-Amin, Raquib Abdul v. The State – 200776028
- Allah, Lahborn v. The State – 200764744
- Anderson, Arlene v. The State – 200766580
- Bailey, Robert Daniel v. The State – 200880449
- Baker, Clifford M. v. The State – 200776046
- Bates, Travis S. v. The State – 200886166
- Baum, Uuno Mattias v. The State – 200747079
- Bishop, Jamel M. v. The State – 200886146
- Blair, Charles v. The State – 200774866
- Briggs, Keith v. The State – 200885075
- Brooks, Darrell Scott v. The State – 200876714
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- Brown, Michael Jerome v. The State – 200773247
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- Bush, Albert Montrell v. The State – 200770866
- Capers, Rasheen v. The State – 200877807
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- Craig, Samar S. v. The State – 200886168
- Cunningham, Michael v. The State – 200877928
- Davis, Terry Lee v. The State – 200876727

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Thompson, Paula Kaye v. The State – 200879386
Vaughn, Timothy v. The State – 200879798
Walker, Joseph v. The State – 200758999
Wilder, Sylvester v. The State – 200771848
Wyder, Devenn v. The State – 200886186
Zeigler, Frank v. The State – 200775827

IT IS SO ORDERED.

C.J.

FOR THE COURT

Columbia, South Carolina

January 6, 2009

cc: Appellate Defender Eleanor Duffy Cleary
Appellate Defender Elizabeth A. Franklin-Best
Appellate Defender Kathrine H. Hudgins
Appellate Defender LaNelle C. Durant
Appellate Defender M. Celia Robinson
Appellate Defender Robert M. Dudek
Appellate Defender Robert M. Pachak
Chief Appellate Defender Joseph L. Savitz, III
Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Ashley A. McMahan
Assistant Attorney General Brian T. Petrano
Assistant Attorney General Christina J. Catoe
Assistant Attorney General Daniel E. Grigg
Assistant Attorney General Gregory P. Jones, Jr.
Assistant Attorney General Julie Thames
Assistant Attorney General Karen C. Ratigan
Assistant Attorney General Lance S. Boozer
Assistant Attorney General Mary S. Williams
Assistant Attorney General Matthew J. Friedman
Assistant Attorney General Michelle J. Parsons
Assistant Attorney General S. Prentiss Counts
C. Rauch Wise, Esquire
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Michael S. Waddington, Esquire
R. Scott Joye, Esquire
Tara Shurling, Esquire
Tommy Arthur Thomas, Esquire
Woodrow Grady Jordan, Esquire
The Honorable Jeanette F. Barber

The South Carolina Court of Appeals

Jackie Richardson, Petitioner,

v.

State of South Carolina, Respondent.

ORDER

This matter is before the Court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief. Petitioner's counsel asserts the petition is without merit and requests permission to withdraw from further representation. After careful consideration of the entire record as required by Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.

Daniel G. Pieper J.

J.

A. J.

Columbia, South Carolina

February 10, 2010

FILED
February 10, 2010

cc: Appellate Defender M. Celia Robinson
Jackie Richardson, #211240
Assistant Attorney General Matthew Friedman

The South Carolina Court of Appeals

Jackie Richardson, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable John C. Few
Charleston County
Trial Court Case No. 2006-CP-10-03386

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

Daniel E. Pieper J.

J.

J.

Columbia, South Carolina
March 30, 2010

cc: Appellate Defender M. Celia Robinson
Jackie Richardson, #211240
Assistant Attorney General Matthew Friedman

STATE OF SOUTH CAROLINA) COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS
Jackie Richardson, 211240, Applicant, v. State of South Carolina, Respondent.	)	99-CP-10-4642 **FINAL ORDER**

This matter comes before the Court pursuant to an Application for Post-Conviction Relief filed December 22, 1999. The Respondent made its Return and Motion to Dismiss on March 10, 2000, requesting that the matter be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, Honorable Daniel E. Martin, Sr., as Administrative Judge for the Ninth Judicial Circuit, issued a Conditional Order of Dismissal dated March 23, 2000, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order upon him in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service by Mail dated May 2, 2000.

The Applicant filed a subsequent pleading with the Clerk of Court for Charleston County, however, no newly-discovered evidence or allegations were presented. Therefore, no reason has been shown to this Court why the Conditional Order of Dismissal dated March 23, 2000 should not become final.

IT IS THEREFORE ORDERED that the Application for Post-Conviction Relief filed December 22, 1999, is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this _____ day of _____, 2001.

_____
DANIEL F. PIEPER
Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina